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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak

Summary

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes submits the present report in accordance with Human Rights Council resolution 27/23. He clarifies the scope and content of the right to information throughout the life cycle of hazardous substances and wastes and identifies several challenges that have emerged in realizing this right, as well as potential solutions to these problems. The Special Rapporteur discusses several obligations of States and the responsibilities of business in relation to implementing the right to information on hazardous substances and wastes.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in accordance with Council resolution 27/23.

2. Hazardous substances and wastes are a public health issue of global concern. Pollution is the largest cause of premature death in low- and middle-income countries.[1] Air pollution alone kills over 7 million people per year.[2] One quarter of the global burden of disease and more than one third of the burden among children are due to environmental determinants.[3] Non-communicable diseases that might be related to hazardous substances, among other causes, include cancer, heart and lung disease, mental disabilities, obesity, diabetes and more.[4] Costs related to increased health care and reduced productivity, among other effects of pesticide misuse, can exceed the amount of official development assistance received by some countries, for example in sub-Saharan Africa.[5]

3. Mismanagement and exposure to hazardous substances and wastes can have profound impacts on all human rights. Information is crucial to preventing human rights violations resulting from exposure to hazardous substances and wastes; crucial information on hazardous substances and wastes is, however, frequently unavailable and inaccessible.[6]

4. The life cycle includes the extraction of oil, gas, metals, minerals and other natural resources, followed by the processing and synthesis of these raw materials into substances that are then used to produce a range of industrial chemicals, mixtures and materials, which may contain hazardous substances. Thousands of hazardous substances, mixtures and materials are then used in various industries to manufacture everyday goods and for industrial practices. For example, hazardous substances are used by the agriculture industry as pesticides, the garment industry to produce leather and textiles, the electronics industry to manufacture mobile phones, computers and televisions among others. Hazardous substances are constituents of cosmetics, building materials, household cleaners, and other consumer products. Throughout the life cycle, wastes and other by-products are generated, often hazardous themselves.

5. The Special Rapporteur has held a broad consultative process with States, international organizations, civil society organizations, national human rights institutions and other stakeholders. He received 48 responses to a questionnaire inviting various

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[1] Global Alliance on Health and Pollution, *Pollution: The Silent Killer of Millions in Poor Countries*, 2014, available from www.gahp.net/new/wp-content/uploads/2014/12/GAHP-PollutionSummaryNov2014DRAFT.pdf.

[2] World Health Organization (WHO), "7 million premature deaths annually linked to air pollution", 25 March 2014, available from www.who.int/mediacentre/news/releases/2014/air-pollution/en/.

[3] WHO, *Preventing disease through healthy environments* (2006).

[4] Peter Sly and others, "Networking to advance progress in children's environmental health", *The Lancet*, vol. 2 (March 2014).

[5] United Nations Environmental Programme (UNEP), *Global Chemicals Outlook* (2012).

[6] UNEP-WHO, *State of the science of endocrine disrupting chemicals: 2012* (2013). See also European Commission/European Environment Agency, *Environment and human health*, Joint EEA-JRC report, No. 5/2013 (2013).

stakeholders to contribute their views and perspectives and is grateful for all the contributions.[7]

6. The present report focuses on the human rights implications of information throughout the life cycle of hazardous substances and wastes. It discusses the types of information that are required to understand these substances better in order to prevent and mitigate their impact in the realization of human rights. In addition, it aims at identifying challenges and obstacles to the realization of the right to information in this context. First, the report introduces the right to information from an international human rights law perspective and its relevance throughout the life cycle of hazardous substances, including a summary of information gaps. Secondly, it provides an analysis of the duties of States to realize the right to information on hazardous substances and wastes, followed by a description of the corollary responsibilities of businesses. The present report concludes with a summary and recommendations for stakeholders.

II. Importance of information on hazardous substances and wastes

7. Information is critical to the enjoyment of human rights and fundamental to good governance. Information about hazardous substances is essential to prevent risks, mitigate harms, conduct focused research on safer alternatives, provide treatment and remedy, and ensure transparency, participation and consent in decision- and policymaking.

8. Information from the scientific community continues to unearth a broad range of adverse health impacts that are linked to various hazardous substances. For example, research shows that daughters of women with above-average levels of one hazardous substance during pregnancy have a fourfold increase in the risk of breast cancer later in life.[8] It has been estimated that 62 per cent of the total production of industrial substances are toxic.[9] The ongoing human exposure to toxic and otherwise hazardous chemicals is estimated to carry tremendous costs for public resources, public health and society at large.[10] However, the actual extent of the impacts of hazardous substances remains largely unknown.

A. Global challenge of information on substances and wastes

9. Securing adequate information on the risks of hazardous substances and wastes has been an incessant global challenge. In 1992, the United Nations Conference on Environment and Development identified two major problems linked to hazardous substances: (a) the lack of sufficient scientific information for the assessment of risks on a great number of substances; and (b) the lack of resources for the assessment of chemicals where information is available.[11] In 2001, the European Commission reiterated that the lack

[7] All the submissions received are available from www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SubmissionsRightInformation.aspx.

[8] Barbara Cohn and others, "DDT exposure in utero and breast cancer", *Journal of Clinical Encocrinology and Metabolism* (16 June 2015).

[9] Joint EEA-JRC report (see footnote 6 above), p. 21.

[10] See UNEP, *Costs of Inaction on the Sound Management of Chemicals* (2013).

[11] United Nations Conference on Environment and Development, Agenda 21, chap. 19 (1992).

of knowledge about the impact of many chemicals on human health and the environment was a cause for concern.[12]

10. In 2006, stakeholders of the Strategic Approach to International Chemicals Management acknowledged that there is a lack of clear, accessible, timely and appropriate information on chemicals for ready use by local populations.[13] To address that global challenge, the global community adopted the Dubai Declaration on International Chemicals Management, in paragraph 21 of which stakeholders pledged to facilitate public access to appropriate information and knowledge on chemicals throughout their life cycle, including the risks that they pose to human health and the environment.

11. In the Special Rapporteur's view, the current patchwork of global treaties for chemicals and wastes does not sufficiently require countries to generate and assess information on the production, use or release of potentially hazardous substances for numerous purposes, including in relation to their obligation to respect and protect human rights and to mitigate the negative impacts of these substances on the human rights of individuals and communities. Furthermore, there is no global system to generate or share missing information among all countries. This major shortcoming has resulted in a lack of available information; inability to access information; and not-so-useful information, particularly with respect to the dangers confronting those who are most at risk of harm from hazardous substances and wastes. There remain grave information gaps on numerous substances that are used, produced, released and disposed as waste by industrial and governmental activities.[14]

12. Information gaps appear to be largest in non-members of the Organization for Economic Cooperation and Development (OECD). Non-OECD members may often have fewer resources for generating and assessing information about hazardous substances, and may also be simultaneously experiencing large increases in the production, import, use and release of hazardous substances and wastes in their territories.[15]

13. Substances have repeatedly come onto the market, often resulting in widespread human exposure, only to be removed later because of evidence of harm or unreasonable risk emerging. While concerns about toxic chemicals and other hazardous substances are growing, the United Nations Environment Programme states that, of the tens of thousands of chemicals on the market, only a fraction has been thoroughly evaluated to determine their effects on human health and the environment.[16]

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[12] Commission of the European Communities, *White Paper: Strategy for a future Chemicals Policy* (2001), p. 4.

[13] Strategic Approach to International Chemicals Management (SAICM), Overarching Policy Strategy, 2006, para. 8 (b).

[14] These include, for example: (a) the number and amount produced and used around the world; (b) hazardous properties, for example the ability to cause cancer, damage reproductive systems or interfere with hormone systems; (c) incidence of adverse effects linked to individual substances and mixtures thereof; (d) adverse impacts of childhood exposure to hazardous substance; (e) disaggregated information regarding the elevated risks to population groups such as minorities and the poor; (f) potential and actual uses; (g) potential and actual exposures; (h) methods for safe handling, storage and disposal; (i) safer substitutes, mitigation measures and other alternatives to reduce or eliminate the risk of harm; (j) amounts released into the air, water and soil, as well as the types and quantities injected underground; (k) transport and travel of substances in and between air, soil and water; (l) contents of everyday products including cosmetics, cleaning products, furniture, building materials, other sources of common, everyday human exposure; (m) enforcement of existing rules and regulations; and (n) information on amounts of waste generated and where it is disposed.

[15] UNEP, *Global Chemicals Outlook* (see footnote 5 above), pp. 13–17.

[16] Ibid., p. 20.

14. In some countries, businesses are not required to produce any information to determine the safety of a chemical before production by workers and use in products sold to consumers, such as toys and furniture. For 85 per cent of tens of thousands of new substances, regulators in one country did not receive any toxicity data from the chemical manufacturer when they were notified of the intent to manufacture the new substance.[17]

15. Loopholes in laws intended to prevent the use of hazardous substances in food have been exploited by businesses, adding newly developed chemical additives to food without government oversight or public access to the information about the identity or safety of the substance. For illustration, businesses in the United States of America have "found their chemicals safe for use in food despite potentially serious allergic reactions, interactions with common drugs, or proposed uses much greater than company-established safe doses".[18] In addition, pesticides have been used before required information is available to completely assess their safety for workers, local communities and consumers.[19]

16. Despite ongoing exposure of children and adults to hazardous substances in cosmetics, food, toys, furniture, electronics, building materials and other common, everyday items, information provided to consumers on the hazardous substances present in these items "covers too few substances and does not reach everyone who needs information to make active choices and assess and handle risks".[20]

17. Excessive and unjustified claims of confidentiality have kept information about the risks of hazardous substances secret, and "far in excess of what is needed to protect trade secrets".[21] Approximately 15,000 of over 24,000 new substances developed since 1982 cannot be meaningfully identified by the public as having known or unknown risks.[22]

18. In the case of the tragedy in Bhopal, India, where thousands lost their lives and tens of thousands have been born into a toxic environment, Union Carbide Corporation (acquired by the Dow Chemical Company) admitted that one highly hazardous gas was released, but did not provide information about other pollutants released. This information is necessary to understand the magnitude of impacts due to the industrial accident and to ensure effective remedy.

19. Furthermore, settlement agreements for alleged harm with broad confidentiality provisions can prevent timely action to avoid additional harm and hinder access to an effective remedy for other victims, particularly those who do not have the resources for legal counsel.

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[17] See United States Environment Protection Agency, Office of Inspector General, Evaluation report (17 February 2010), p. 6, available from www.epa.gov/oig/reports/2010/20100217-10-P-0066.pdf.

[18] Natural Resources Defense Council, "Generally recognized as secret: chemicals added to food in the United States" (12 May 2014), available from www.nrdc.org/food/safety-loophole-for-chemicals-in-food.asp.

[19] United States Government Accountability Office (GAO), "Pesticides: EPA should take steps to improve its oversight of conditional registrations" (August 2013), available from www.gao.gov/assets/660/656825.pdf.

[20] Swedish Chemical Agency, "Chemical substances in articles" (2011), p. 14, available from www.kemi.se/Documents/Publikationer/Trycksaker/Rapporter/Rapport3-11-Kemikalier-i-varor.pdf.

[21] Sheila Ferguson and others, "Influence of CBI requirements on TSCA implementation" (March 1992), p. 20, available from www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2002-0054-0074; see also GAO, "Observations on the Toxic Substances Control Act and EPA implementation" (13 June 2013), available from www.gao.gov/products/GAO-13-696T.

[22] Earthjustice, "Petition for rulemaking to establish time limits for confidentiality claims applicable to information received under Toxic Substances Control Act" (2014), available from http://earthjustice.org/sites/default/files/files/TSCA-CBI-Sunset-Petition.pdf.

20. In the context of people harmed by pollution resulting from extractive industries, the unavailability or unreliability of baseline information has been a recurring challenge. Baseline information about the presence of hazardous substances in air, water and soil are important to understand the cause and effect of industrial activity and to ensure access to justice and to an effective remedy for victims whose rights may have been violated. In addition, some have voiced a concern that information generated has a bias to emphasize high levels of naturally occurring toxic metals to neutralize pollution concerns and responsibility for wrongdoing. Furthermore, examination of the provided information through independent experts is often missing.

21. Regarding hazardous waste, there is no clear, global overview of the volume of hazardous waste generated, the exact sources of or destinations for the waste, the hazardous substances present, or methods of handling.[23] Unfortunately, it is often only after people suffer adverse effects that the illegal dumping of toxic waste is uncovered.

B. Human rights implications of the right to information on hazardous substances and wastes

22. The right to information is a right in and of itself and one of the rights upon which free and democratic societies depend (see E/CN.4/2000/63, para. 42). The right to information derives from the right to freedom of expression and the right to take part in public affairs stipulated in articles 19 and 25 respectively of the International Covenant on Civil and Political Rights. Similar provisions are also found in several international and regional human rights instruments, as well as in national constitutions and laws. According to the Special Rapporteur on the promotion and protection of the right to freedom of expression, this right encompasses the right of individuals to request and receive information of public interest and information concerning themselves that may affect their individual rights (see A/68/362, para. 19).

23. Concerns have been raised that, in many countries, people lack basic information about and influence over the quality of their drinking water, the air they breathe, the land they live on and the food they eat (see ECE/MP.PP/2014/27/Add.1, para. 16). In this context, better access to information can enable the exercise of economic, social and cultural rights, including the right to the highest attainable standard of physical and mental health, the right to food, the right to safe drinking water and sanitation, and the right to a healthy environment.

24. Information is a precondition for the realization of several civil and political rights. In the context of hazardous substances and wastes, information gaps create a fundamental impediment to realizing the right to free, active and meaningful public participation by individuals and communities to decide what risks they are willing to accept. Principle 10 of the 1992 Rio Declaration on Environment and Development explicitly clarifies that information on hazardous materials and activities is necessary to ensure participation of all to achieve the best possible outcome on environmental issues.[24]

25. For numerous people who die prematurely because of hazardous substances every year, information on risks, mitigation measures and safer alternatives can help prevent harm and save lives, implicating the right to life.

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[23] Secretariat of the Basel Convention, *Vital Waste Graphics 3* (2012), p. 7, available from www.zoinet.org/web/sites/default/files/publications/vitalwaste_BR.PDF.

[24] *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (A/CONF.48/14/Rev.1), part one, chap. I.

26. Furthermore, information gaps regarding hazardous properties, uses and exposure to hazardous substances, together with latency periods, genetic variation, lifestyle choices and other variables, create a complex array of uncertainties and unknowns that can obstruct access to an effective remedy for victims.

27. Meaningful consent relies upon and cannot be achieved without information. Under article 7 of the International Covenant on Civil and Political Rights, people have the right not to be subjected without free consent to medical or scientific experimentation, which includes human exposure to substances the potential adverse effects of which are unknown. In the context of hazardous substances, lack of information, together with a lack of consent to be exposed to substances and their risks, directly affect this right. Furthermore, protecting the ability of individuals to exercise consent to having hazardous substances enter their bodies is indivisible, interdependent and interrelated to numerous human rights, including, among others, the right to self-determination, human dignity and health, as well as freedom from discrimination (see A/64/272, para. 19, and E/C.12/2000/4, para. 8).

28. Indigenous peoples have the right to give their free, prior and informed consent about the exploitation of resources on their land and about the storage and disposal of hazardous substances in their lands or territories, and other rights that require information about hazardous substances.[25]

29. Access to information is necessary to evaluate the implications of hazardous substances with respect to groups that are at higher risk of harm from hazardous substances. Low-income or minority communities, indigenous peoples and other groups may be disproportionately at risk of adverse impacts owing to higher levels of exposure.

30. Children are particularly at risk of serious and irreversible effects from exposure to a myriad of hazardous substances in their homes, schools and playgrounds. Children are often exposed to higher levels of hazardous substances than adults and this exposure comes during critical periods of development, when children are at greatest risk of adverse impacts from carcinogens, hormone disrupting chemicals, mutagens, reproductive toxicants and other hazardous substances.

31. Workers are also exposed to above-average levels of hazardous substances, with regular reports of inadequate training and adverse health impacts from preventable accidents and occupational exposure. Workers have the right to remove themselves from situations they believe are hazardous, which is contingent on information about the known and unknown risks of the substances to which they are exposed.

C. Normative content of the right to information on hazardous substances and wastes

32. International human rights standards together with international chemical standards can serve to clarify the normative content of the right to information on hazardous substances and wastes. In the Special Rapporteur's view, the right to information on hazardous substances and wastes would require that relevant information be available, accessible and functional, in a manner consistent with the principle of non-discrimination. Furthermore, it needs to be ensured that people who may be exposed to hazardous substances and wastes are aware that they have a right to information and understand its relevance.

[25] See United Nations Declaration on the Rights of Indigenous Peoples, arts. 29 and 32; International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

1. Availability

33. Information is available when current reliable information has been generated and collected in a manner adequate to assess the magnitude of potential adverse impacts on the rights of people from hazardous substances and wastes. Necessary information on hazardous substances and wastes can include, for example, their intrinsic hazards and properties, actual and potential uses and releases, as well as protective measures and regulations. It also includes details about the amounts of substances present in people and their environments compared with risks, and the prevalence of adverse impacts linked to hazardous substances, such as cancer, impaired brain function, heart disease and other non-communicable diseases.

2. Accessibility

34 Information about hazardous substances and wastes is accessible when everyone can seek, obtain, receive and hold available information, unless there is an overriding legitimate public-interest justification for non-disclosure. Information must be both physically and economically accessible, and there must be public awareness about its availability and how to make use of the information. Information is physically accessible when information is provided in a timely manner, either in response to public inquiries or when the information holder or information generator actively disseminates information.[26] The information requested should be provided and made available to the requester in a timely manner. In addition, information should be physically accessible at the time of purchase and when using a product containing hazardous substances. To be economically accessible, the cost of accessing information should be kept at a minimum, possibly charging only the cost incurred for reproduction of information.

3. Functionality

35. Information should be fit for its intended purpose. Making information available or accessible does not necessarily make it functional. In order to fulfil the criteria of availability and accessibility, information should be functional. Information about hazardous substances is not functional unless it works to prevent harm, to enable democratic decision-making, and to ensure accountability, access to justice and an effective remedy.

36. To be functional, information should be scientifically accessible, imparting knowledge with a reasonable degree of effort on the part of the intended user. Certain professionals will always require substantially more technical information about hazardous substances and wastes than potentially affected consumers and community members. For example, the technical information about hazardous substances appropriate for regulators and researchers is not user-friendly for consumers at the point of purchase. Technicalities must be translated into a language that is functional, to enable individuals and groups of individuals to make informed choices. In doing so, underlying data from which conclusions are drawn should be accessible to ensure the veracity of such conclusions.

4. Non-discrimination and equality

37. Non-discrimination is a pillar of human rights law. In relation to information, it is essential to ensure that the risks presented by hazardous substances and wastes be made compliant with this principle. Disaggregated and specialized information is required to

[26] For instance, article 49, paragraph 2, of the Georgian Law on Nuclear and Radiation Safety stipulates that the population of Georgia despite its civil status has a right to receive timely information about the nuclear and radiation situation.

understand and prevent disproportionate implications and impacts of hazardous substances and wastes on individuals and specific population groups, including different ages, incomes, ethnicities, genders as well as minorities and indigenous peoples. The right to information should be implemented with particular care so that no one is excluded through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or inattention to their particular circumstances.

D. Limitations to the right to information on hazardous substances and wastes

38. Confidentiality claims must be legitimate in accordance with international human rights standards. Under the principle of maximum disclosure there is a presumption that all information held by public bodies should be subject to disclosure, subject to a narrow set of public-interest limitations. To this end, the right to information is subject to certain legitimate, public-interest limitations in accordance with article 19 (3) of the International Covenant on Civil and Political Rights. Any limitation must be provided by law; it must be to protect the rights or reputation of others or to protect national security, public order, public health or morals; and it must be proved to be necessary and to be no more restrictive than is required to achieve the purported aim (see A/HRC/14/23, paras. 72–87).

39. An analysis of relevant human rights provisions indicates several common criteria, namely, conformity with the law, principle of legitimacy, principle of proportionality and necessity, reasonable purpose and objective and protection of the right of others (see A/68/362, para. 51). Grounds for refusal of access to information should be interpreted in a restrictive way, taking into account the public interest served by disclosure. The balancing of interests is widely established under national and international laws. It is not legitimate to limit access to information because the information seeker did not provide an interest or reasons for the request to access information.[27]

40. It is generally acknowledged that there is an overriding public interest in the disclosure of information concerning serious violations of human rights and humanitarian law (see A/68/362, para. 37). Article 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms expressly provides that everyone has the right to information regarding human rights violations. Countries have laws to override confidentiality claims in cases where the information requested relates to human rights violations or is relevant to investigate, prevent or avoid violations thereof.

41. Among the types of information that should never be confidential is information about systematic or widespread human right violations, and information about other violations of human rights that would prevent accountability, meaningful public participation or access to an effective remedy (ibid.). The potential for the mismanagement of hazardous substances and wastes to lead to systematic or widespread human rights violations is widely known.

42. To this end, certain types of information about hazardous substances cannot be legitimately claimed as confidential. It is not legitimate to claim that public health and

[27] UNEP, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters* (2010), guideline 1; *Claude Reyes et al. v. Chile*, Series C No. 151, 19 September 2006, Inter-American Court of Human Rights; and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 4, para. 1 (a).

safety information on hazardous substances is confidential. There is widespread recognition that health and safety information should not be confidential, and States have legally binding obligations to this end.[28]

43. The interpretation of what constitutes health and safety information varies. The Stockholm Convention on Persistent Organic Pollutants provides implicit and non-exhaustive guidance as to what constitutes health and safety information, by virtue of what is necessary to implement the Convention. Health and safety information necessary to implement the Convention includes: chemical identity, physical properties, information about the ability of the substance to travel across borders in wind and water, and evidence of adverse effects to human health[29] such as cancer and other non-communicable diseases. In addition, the Convention compels the disclosure of information on the use of substances eligible for listing under the Convention, otherwise the use of such substances may be prohibited.

44. Secondly, emissions of hazardous substances into the environment and the unsound disposal of waste is public health information that should only in very rare circumstances be confidential. For example, Spain does not allow for emissions reported under its Pollutant Release and Transfer Register to be claimed as confidential.[30] This information is necessary to assess the potential for human exposure to hazardous substances and wastes, inextricable from protecting human rights.

45. Recurring challenges to realizing the right to information in the context of hazardous substances are exceptions for commercial secrets. The refusal to disclose information because it would adversely affect the value of intellectual property or the confidentiality of commercial businesses or industrial information is not legitimate if it may hamper public health or the overall public interest.[31] According to one Government's self-assessment, the "current process for handling confidential business information requests is weighted toward the protection of industry information rather than public access",[32] contrary to the intent of the law. It is not legitimate to protect a competitive advantage of businesses that create risks to public health and other public interests. Under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights the disclosure of certain types of health and safety information is unobjectionable "except where necessary to protect the public".[33]

46. The Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters does allow for the protection of intellectual property and commercial information, but not if the information sought concerns emissions into the environment. In interpreting the supremacy of the public interest in information about emissions into the environment over confidentiality claims under the Convention, a General Court of the European Union held in 2013 that:

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[28] Stockholm Convention on Persistent Organic Pollutants, art. 9, and Minamata Convention on Mercury, art. 17. See also the Dubai Declaration on International Chemicals Management.

[29] Stockholm Convention, annex D, para. 1 (e) (i).

[30] Spanish Ministry of Environment, "First Spanish Protocol on Pollutant Release and Transfer Registers Implementation Report" (December 2013–January 2014), p. 19, available from www.prtr-es.es/Data/images/20131216_EN_1erINFORMEP_PRTR_ESPANA.pdf.

[31] Agreement on Trade-Related Aspects of Intellectual Property Rights, arts. 7–8. Often used as an umbrella term, confidential business information may include trade secrets, which in some legal systems (mostly civil law) are not considered intellectual property.

[32] United States Environmental Protection Agency, Evaluation report (see footnote 18 above).

[33] Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 39 (3).

if the institution concerned receives an application for access to a document, it must disclose it where the information requested relates to emissions into the environment, even if such disclosure is liable to undermine the protection of the commercial interests of a particular natural or legal person, including that person's intellectual property.[34]

47. The General Court mentions that "an overriding public interest in disclosure exists where the information requested relates to emissions into the environment".[35] The Court's decision reversed the European Commission's refusal to grant access to information about the widely used pesticide glyphosate, which was categorized as probably carcinogenic to humans by the International Agency for Research on Cancer of the World Health Organization (WHO) in 2015.

III. Implementation of the right to information on hazardous substances and wastes

A. Obligations of States

48. States are the primary duty-bearers to respect, protect and fulfil human rights, and are bound to take all the steps necessary to ensure the right to information with respect to the adverse impacts of hazardous substances and wastes. States must ensure that related information is available, accessible and functional for everyone. This obligation not only requires States to refrain from interfering with the distribution and the free flow of information but also requires States to provide or make information public with or without request (see general comment No. 34 of the Human Rights Committee on the freedoms of opinion and expression, para. 19).

49. The obligation to implement the right to information on hazardous substances and wastes stems from various rights including those rights that are implicated through adverse impacts of hazardous substances and wastes and rights that specifically stipulate the obligation of States to provide access to information. For example, in the context of the right to the highest attainable standard of health, as the right is an inclusive right extending to underlying determinants of health such as access to health-related education and information, access to information is an essential feature of the right itself and of an effective health system (see A/HRC/7/11, para. 40). Twenty years after principle 10 of the Rio Declaration on Environment and Development, at the United Nations Conference on Sustainable Development in 2012, stakeholders made a number of appeals to improve transparency, access to information and public participation.[36] Good governance and a truly sustainable economy require the informed involvement of members of the public, be it in their role as voters, consumers or shareholders (ECE/MP.PP/2014/27/Add.1).

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[34] Judgement of the General Court (Second Chamber) of 8 October 2013, *Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) v. European Commission*, case T-545/11, para. 38.

[35] Ibid., para. 37.

[36] General Assembly resolution 66/288, para. 43. Today, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and the Kiev Protocol on Pollutant Release and Transfer Registers remain the only legally binding instruments established to implement principle 10 of the Rio Declaration on Environment and Development.

1. To generate, collect, assess and update

50. To respect, protect and fulfil human rights, States have a duty to investigate the actual and potential human rights impacts of hazardous substances and wastes throughout their life cycle. As such, States have a duty to generate, collect, assess and update information on hazardous substances and wastes. Substances must be assessed for: (a) their hazardous properties, such as the ability to cause cancer or explode; (b) the likelihood of exposure, including for those at risk of disproportionate levels of exposure; (c) the risk of harm; and (d) options available to prevent harm.

51. This duty needs to be carried out regularly, systematically and with special attention given to continuing innovation in the development of new substances with unique risks, and information being generated about the risks of hazardous substances. Because neither industry nor science is static, States must continue to perform this duty diligently, as close as possible to the pace of scientific advancements. An example of this duty is found under article L.124–7 of the French Environment Code which calls on the public authorities to make sure that the information about the environment that they have collected is precise and up to date and can enable comparison.

52. States have a duty to ensure that information about public health and other public interests is available to individuals, and that each person can exercise his or her human right to information. For example, the European Court of Human Rights held that the State had breached its duty to provide "essential information that would have enabled [the nearby community] to assess risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in the event of an accident at [the chemical] factory".[37] Significantly, the State was not in possession of the information.[38]

53. While many countries do not have specific domestic legislation or policies in place to ensure that a minimum amount of critical information is generated, collected, assessed and updated on the properties, uses and fate potentially of all hazardous substances, certain States have taken action individually and jointly to address the information gaps that prevent States from assessing actual and potential human rights impacts from hazardous substances and wastes. The OECD Mutual Acceptance of Data system and high production volume chemicals programme helped to generate, collect and assess information on the most widely used hazardous substances and wastes efficiently and through international cooperation.

54. The European Union has led efforts to generate, collect and assess information on the hazardous properties and uses of approximately 30,000 industrial substances. Under the 2006 European Union Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals, businesses must provide States with a minimum amount of information on the hazardous properties of industrial chemicals produced or imported at or above one ton per year. If information is not available, it must be generated by businesses that wish to register the substance for use. Reporting requirements under the Regulation, where information about hazardous industrial substances must flow up and down the value chain, to and from chemical manufacturers and downstream users, help to ensure that substances are being used safely and information is updated.

55. In the aftermath of the tragedy in Bhopal, several countries adopted laws to generate, assess and update information about the risk of large-scale chemical accidents and regular industrial emissions of hazardous substances. In some countries, local governments are

[37] European Court of Human Rights, *Guerra and Others v. Italy* (116/1996/735/932), Judgement, 19 February 1998, summary.

[38] Ibid., para. 59.

required to plan for emergencies involving hazardous substances, and communities have a "right to know"[39] about hazardous substances in their vicinity. The European Union's Seveso Directive was updated in 2012 to improve access to information. The new Seveso (III) Directive recognizes the duty of European Union member States to "make information available on where to find information on the rights of persons affected by a major accident",[40] in addition to the duty to actively disseminate and update this information.

56. To generate information on regular releases or disposal of hazardous substances from stationary industrial sources into air, water and land, several countries have established toxics release inventories or pollutant release and transfer registers. Today, many of these systems are established according to the Kiev Protocol on Pollutant Release and Transfer Registers. Pollutant release and transfer registers are effective for furthering environmental democracy, through encouraging the active participation of all interested stakeholders in processes that contribute to better decision-making, planning and implementation of policies and programmes at all levels. All these systems include the generation of updated information on the release of hundreds of hazardous substances and the availability of information through map-based or other database search functions.

57. States have recognized the importance of measuring the amounts of hazardous substances in people, also referred to as "biomonitoring". Biomonitoring studies can provide important information to prevent harm, data points for cause and effect, and evidence of the efficacy of measures being taken to reduce exposure to hazardous substances. Some studies have shown that over 500 different hazardous substances are found in adults and over 200 in children.[41] Although less biomonitoring information is available from developing countries, "it is reasonable to conclude that to the extent that people are exposed to the same chemicals, the results will be similar".[42] While certain countries and international organizations have taken initiatives, biomonitoring is underutilized around the world.

58. States are also investigating epidemiological information on adverse effects linked to hazardous substances and wastes. Numerous States have cancer registries, which "play an important role in research into the cause of cancer".[43]

59. However, despite this progress there remain serious information gaps and obstacles to generating, collecting, assessing and updating information gaps.

60. In one country, the paradoxical situation exists where a State must have information that an "unreasonable" risk of harm exists before it can compel businesses to generate substantial amounts of missing information to assess whether such a risk exists.[44] It is important to have a minimum amount of information for all substances to ensure the safe use of hazardous substances and to avoid situations where one hazardous substance is substituted with a different hazardous substance of equal or even greater concern. And where laws exist, challenges have emerged with the enforcement of these laws. For

[39] For example, the United States Emergency Planning and Community Right-to-Know Act (1986).

[40] Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances (Seveso III), preamble, para. 19.

[41] See Environmental Working Group, "Toxic chemicals found in minority cord blood" (2 December 2009), available from www.ewg.org/news/news-releases/2009/12/02/toxic-chemicals-found-minority-cord-blood. UNEP states that these studies are indicative of a global problem.

[42] UNEP, *Global Chemicals Outlook* (see footnote 5 above), p. 21.

[43] Members of International Association of Cancer Registries, available from www.iacr.com.fr/index.php?option=com_comprofiler&task=userslist&Itemid=476 http://www.iacr.com.fr/index.php?option=com_comprofiler&task=userslist&Itemid=476.

[44] United States, Toxic Substances Control Act, sect. 4 (a) (1) (A) (i).

example, 69 per cent of submissions by chemical manufactures that were evaluated by authorities were not in compliance with the information requirements of the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals.[45] Furthermore, pollutant release and transfer registers are not in place in many countries.

2. To effectively disseminate information

61. States have a duty to effectively disseminate information to everyone who may be adversely affected by the production, storage, use, release and disposal of hazardous substances and wastes. This includes the obligation to communicate information both actively and on demand, as well as to make information functional.

62. Over 100 countries have laws reflecting the duty to provide information that is held by public authorities on request, subject to certain exceptions and limitations.[46] In these countries, applicants are often entitled to obtain information within a specific time frame and without specifying the reasons for the request.

63. States have a duty to actively disseminate information to businesses, governmental authorities and the public, which is necessary to protect individuals and communities from the negative impact of hazardous substances on their health and well-being. In addition to jurisprudence articulating this duty in the context of various human rights,[47] States have acknowledged within a global policy framework that public awareness is a basic need for decision-making, including products and articles containing hazardous substances.[48]

64. Informing consumers about hazardous substances in products has been a challenge. To help realize the right of consumers to know whether they are buying products with hazardous substances, States have created mechanisms to enable consumers to request information from companies. Article 33 of the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals gives European consumers the right to ask whether consumer articles contain certain types of hazardous substances. In addition, labelling requirements enable consumers to understand quickly which hazardous substances are present or may have been during production. The Government of the United Kingdom of Great Britain and Northern Ireland operates a web-based environmental information service called "What's in your backyard?" that enables members of the public to find information on hazardous substances waste on a local basis by entering their postcode.[49] In addition, Denmark's Environmental Protection Agency website has a selection of "green tips" for consumers, especially on chemicals in products. Furthermore, major hospitals in Copenhagen have national poison hotlines, which provide information on chemicals in relation to poisoning and mainly household, domestic accidents involving chemicals.

65. In addition to government initiatives, mobile phone applications such as ToxFox — which checks whether cosmetic products contain hazardous substances — are available to help consumers have access to information at the point of purchase, thereby empowering them.[50] At the global level, UNEP is leading the "chemicals in products" project to increase

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[45] European Chemicals Agency, "Compliance checks: statistics", available from www.echa.europa.eu/regulations/reach/evaluation/compliance-checks/5-percent-compliance-checks-2010-registration-dossiers/statistics.

[46] See www.RTI-Rating.org.

[47] See, for example, European Court of Human Rights, *Öneryildiz v. Turkey*, application No. 48939/99, 30 November 2004, para. 90.

[48] SAICM, Overarching Policy Strategy (see footnote 13 above).

[49] See http://apps.environment-agency.gov.uk/wiyby/default.aspx.

[50] See www.bund.net/themen_und_projekte/chemie/toxfox_der_kosmetikcheck/toxfox_app/.

the availability of and access to information on the use of chemicals throughout the life cycle of certain types of products.

66. Although efforts are being made, public access to information about hazardous substances and wastes remains limited around the world.

3. To identify and inform those at risk of disproportionate impacts

67. In order to protect those most at risk, States must ensure that disaggregated information is available and accessible regarding the risks of hazardous substances to various population groups, such as children or pregnant women. Similarly, the information should be monitored and disaggregated by sex and population group, such as workers in industries with exposure to hazardous substances, low-income communities, indigenous peoples or minorities, or other groups who are at high risk of adverse impacts. In addition, States must ensure information flows effectively to communities at risk to enable them to be aware of risks and options to prevent harm.

68. Recently the Environmental Protection Agency of the United States released high-resolution maps that show disproportionate emissions in certain regions and locales in its territory. Such high-resolution data, coupled with population data can help States identify, investigate and mitigate disproportionate impacts on low-income, minority and other communities. Disaggregated information on adverse effects linked to hazardous substances, such as cancer, can help to identify those at risk of disproportionate impacts, and help to provide an effective remedy. In addition, biomonitoring initiatives can also help to provide disaggregated information, for example on hazardous substances in mother's breast milk passed onto children.

69. To help overcome the challenge of making information accessible to workers and others at risk, a long-standing tool nationally and internationally is classification and labelling. These laws help to ensure businesses, workers and the public have access to information about the risks associated with hazardous substances in the workplace. To this end, States have pledged to implement "hazard communication mechanisms",[51] such as the Globally Harmonized System of Classification and Labelling of Chemicals, and to use safety data sheets. Training of workers is required for these tools to work effectively.

4. To ensure confidentiality claims are legitimate

70. Ensuring the legitimacy of confidentiality claims is an inherent challenge given that the information to be scrutinized for legitimacy is secret. Secrecy serves as a barrier to accountability, remedy and democratic decision-making by consumers and communities. It can also prevent international cooperation from tackling the global challenge of managing hazardous substances and wastes. Given the challenges described above, increased vigilance is required on the part of States to protect against illegitimate confidentiality claims.

71. Several international agreements on hazardous substances stipulate that health and safety information about hazardous substances should not be considered as confidential.[52] In line with the obligations under these international treaties, States must ensure that confidentiality claims are legitimate to protect and realize human rights. When a State

[51] SAICM, Overarching Policy Strategy (see footnote 13 above), para. 15 (b) (ii).

[52] See, for example, article 17 of the Minamata Convention on Mercury stipulating that information on the health and safety of humans and the environment shall not be regarded as confidential; and article 9 (5) of the Stockholm Convention stipulating that information on health and safety of humans and the environment shall not be regarded as confidential.

imposes restrictions on the exercise of freedom of expression which encompasses the right to seek and receive information, these may not put in jeopardy the right itself (see general comment No. 34, para. 21).

72. States have taken various steps to help ensure the legitimacy of confidentiality claims with respect to hazardous substances and wastes. States have clarified that that information should be disclosed despite confidentiality of business information in cases where a substance is a hazardous chemical substance[53] and environmental information should not be rendered confidential.[54]

73. To ensure access to an effective remedy for unjustified claims of confidentiality, States have implemented appeals mechanisms. Either an administrative appeals body or courts, or a combination of the two, are used by States. For example, in Mexico an administrative body (Federal Institute for Access to Information) handles appeals in the event of a denial. France and the United Kingdom also use administrative bodies for this purpose. The Republic of Korea and Ukraine allow appeals through the courts, and the United States uses administrative bodies for the first appeal, followed by the courts for further appeals.

74. Despite clarifying statements, appeals mechanisms and global agreement that health and safety information about hazardous substances should not be confidential, there remain serious problems with the confidentiality of information not serving the public interest by preventing access to health and safety information about hazardous substances and wastes.

5. To engage in international cooperation to help make information available and accessible

75. Under numerous legal instruments, States have a duty to engage in international cooperation to protect human rights, which includes efforts to protect human rights from impacts resulting from the misuse of hazardous substances and wastes. International trade in hazardous substances, whether as chemical products or as constituents of articles and waste, is accelerating driven in large part by globalization. Furthermore, many of the challenges to States to protect those within their territory from hazardous substances result from actions or inactions abroad, such as the export of products containing hazardous substances or the release of hazardous substances that can travel long distances through wind, water and food sources.

76. Lists of hazardous substances and information-sharing about their potential uses help to enable international cooperation on hazards and potential risks, particularly useful for countries with limited resources and businesses that prefer to avoid using or selling products with hazardous substances. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade could be particularly useful in this respect.

77. In many ways, including some described above, States have cooperated with one another to share information over the past several years. However, economic interests continue to create obstacles for sharing information on hazardous substances and wastes internationally.

[53] Republic of Korea, Enforcement Rules of the Act on the Regulation, Evaluation, etc. of Chemical Substances (2013), art. 35.

[54] Georgia, The General Administrative Code of Georgia (1999), art. 42.

B. Responsibilities of businesses

78. Businesses have a responsibility to respect human rights. The Guiding Principles on Business and Human Rights elaborate on existing standards and practices for States and businesses.[55] Businesses have a responsibility to respect, at a minimum, all internationally recognized human rights.

79. Under the Dubai Declaration on International Chemicals Management, chemical manufacturers and other industries committed themselves "to respecting human rights and fundamental freedoms",[56] which includes the right to information.

80. Virtually every industry and business sector is linked to the production, use, release or disposal of hazardous substances and wastes up and down the value chain. The failure of governments to require a minimum level of health and safety information on industrial chemicals introduced into the flow of commerce has exposed downstream businesses to numerous risks from selling products containing hazardous substances, including the potential for substantial legal liability and reputational risks, as well as the costs of clean-up and other necessary protection measures.

81. In order to meet their responsibility to respect human rights, businesses should have a policy commitment to respect human rights, a process for human rights due diligence, and a process to enable an effective remedy for human rights impacts they cause or to which they contribute.[57]

82. Information-related obstacles are one of the most significant challenges confronting victims who seek an effective remedy for human rights violations they suffer from hazardous substances and wastes. In performing human rights due diligence, businesses should identify, prevent, mitigate and account for how they address their adverse human rights impacts.[58] The concept of human rights due diligence requires more than compliance with existing laws for hazardous substances and wastes. The due diligence process should include, inter alia, assessments of actual and potential impacts and communicating information about how actual and potential impacts are mitigated and addressed.[59]

1. To identify and assess adverse impacts

83. When conducting due diligence, businesses should identify and assess actual and potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.[60]

84. A fundamental challenge for all businesses is that "understanding of health impacts of [hazardous substances] remains limited".[61] This is a crucial element relevant to all businesses in order to ensure they are carrying out their due diligence process. For substances where hazards are understood, ensuring that these substances are used safely is another substantial challenge for businesses.

85. Consensus has grown that greater responsibility should lie with businesses to make information available about the risks and impacts of hazardous substances. In 2006, States

[55] United Nations, *Guiding Principles on Business and Human Rights* (2011).
[56] Dubai Declaration on International Chemicals Management, para. 10.
[57] Guiding Principle 15.
[58] Guiding Principle 17.
[59] Guiding Principle 17.
[60] Guiding Principles 18.
[61] Joint EEA-JRC report (see footnote 6 above), p. 21.

and industry stressed the responsibility of industry to make available to stakeholders such data and information on health and environmental effects of chemicals as are needed.[62]

86. In identifying and assessing adverse impacts, ensuring the integrity of information about hazardous substances has been a reoccurring challenge. In some cases, scientists may not have disclosed financial ties with chemical manufacturers and other possible conflicts of interest when making statements as "independent" scientific experts. In other cases, the integrity of pollution sampling and information monitoring has been of concern.

2. To effectively communicate information

87. There is a shared responsibility between businesses that supply and use hazardous substances to communicate information to determine risks and prevent harm.[63] According to the principles adopted by the American Chemistry Council, companies throughout the chain of commerce should be responsible for providing necessary hazard, use, and exposure information.[64]

88. Businesses have a responsibility to publicly communicate information about the risks created by their activities and how they mitigate and address both actual and potential human rights impacts with which they might be involved,[65] including businesses that use, produce and release hazardous substances. As indicated by Guiding Principle 21, these communications should:

(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;

(b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;

(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Information about these measures should flow among businesses, as well as from businesses to governmental authorities and the public.

89. Businesses have a responsibility to provide any and all information necessary to respect human rights affected by hazardous substances. To this end, emissions to the environment should not be considered confidential.[66] The Zero Discharge of Hazardous Chemicals (ZDHC)[67] industry initiative sees a system like the one of pollutant release and transfer registers as one "that would meet one of the ZDHC key principles of engaging stakeholders to improve the apparel and footwear supply chain system".[68]

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[62] Dubai Declaration on International Chemicals Management, para. 20.

[63] ILO Convention No. 170 (1990) concerning Safety in the use of Chemicals at Work.

[64] American Chemistry Council, "10 principles for modernizing TSCA [Toxic Substances Control Act]".

[65] Guiding Principle 21.

[66] Most businesses obliged to report under the Kiev Protocol on Pollutant Release and Transfer Registries do not claim confidentiality very often, and in some countries confidentiality claims are decreasing from year to year. See ECE/MP.PRTR/2014/5, para. 174.

[67] See www.roadmaptozero.com/.

[68] Zero Discharge of Hazardous Chemicals Programme, *Right to Know Disclosure Methodology Research* (2014), available from www.roadmaptozero.com/df.php?file=pdf/RightToKnowDisclosureMethodologies.pdf.

90. Businesses are increasingly disclosing the ingredients of products they make and sell. This not only helps to meet their responsibility to consumers and communities, but also helps to ensure that adverse impacts do not result from improper disposal or reuse.

91. While some consumer products provide limited access to information about hazardous substances (or the absence of a few hazardous substances in their products), there are serious deficiencies in the amount and type of information consumers have regarding the hazardous chemicals present in products they use. Critically, there is a deficit of information about actual and potential impacts of hazardous substances. Furthermore, information is missing about the adverse human rights impacts from hazardous substances implicated in the production of consumer products. There is also a lack of information about the actual and potential impacts after products are discarded for recycling or disposal.

92. Businesses also have a responsibility to communicate information to individuals or groups at disproportionate risk of adverse impacts.[69] In general, but especially for children, local communities in high-risk areas and others at risk of disproportionate impacts, it is not sufficient to simply identify the name of the hazardous substance. It is essential to explain and create awareness about what harm may result. This concept has been adopted for tobacco products, where packages do not identify the hazardous substance, but rather cancer and other adverse effects. However, for cosmetics and other consumer products with substances listed, often only the substance is listed (some of which may be masked by generic terms such as "fragrance"), not the potential adverse effect. And of course, most products do not contain their constituent substances at all, including hazardous substances.

3. To engage in cross-border cooperation

93. The ongoing expansion of supply chains and business relationships around the world — resulting in increased production, use and disposal of hazardous substances and wastes in countries with limited capacity to ensure their safe use and disposal — heightens the responsibility of businesses to ensure their products do not cause or contribute to human rights violations because of hazardous substances, both at home and abroad.[70]

94. Businesses need to have appropriate tracking mechanisms in place to ensure that actual and potential human rights impacts are addressed, whether they cause or contribute to these impacts.[71]

95. When information is submitted to one State about the health and safety of any substance, it should be in the public domain. Whether or not a country has identical, appropriate or reliable systems to protect confidentiality is not pertinent when it comes to health and safety information about hazardous substances and wastes, because this should not be confidential.

IV. Conclusion and recommendations

96. **The Special Rapporteur emphasizes that the right to information on hazardous substances and wastes is central to the enjoyment of human rights and fundamental freedoms. The Special Rapporteur argues in the present report that information**

[69] *OECD Guidelines for Multinational Enterprises* (2011), Commentary on human rights, chap. IV, para. 40.

[70] See OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2013).

[71] Guiding Principle 20.

should be available, accessible and functional for everyone, consistent with the principle of non-discrimination.

97. People have a right to know whether they are being exposed to hazardous substances. Yet, whether on consumer products or food, information is not available or accessible. Over the past several decades, tens of thousands of different hazardous substances have been used by businesses with inadequate information on their properties and uses, as well as their fate as waste, to assess their impacts on human rights. The right of victims to an effective remedy, the right to meaningful participation, the right not to be subject to experimentation without consent, the right to the highest attainable standard of health and several other human rights have all been frustrated by large information gaps throughout the life cycle of substances and wastes.

98. Today, information is neither available nor accessible about, inter alia, the safety of tens of thousands of chemicals on the market; the potential sources of exposure to substances with known and unknown hazards; the amount of human exposure to hazardous substances; and the impacts of exposure to a large number of hazardous substances starting from conception.

99. To protect human rights affected by hazardous substances, States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts; to ensure confidentiality claims are legitimate; and to engage in international cooperation to ensure that foreign Governments have the information necessary to protect the rights of people in their territory.

100. In discharging their duty to conduct human rights due diligence, businesses are responsible for identifying and assessing the actual and potential impacts of hazardous substances and wastes, either through their own activities or as a result of their business relationships; to communicate information to other businesses, governments and the public effectively.

101. In the light of these observations, the Special Rapporteur offers the following recommendations:

(a) To ensure information is available:

(i) States must generate, collect, assess and update information about the properties, uses, emissions and the fate of hazardous substances and wastes necessary for assessing actual and potential impacts on human rights, including the right to life and health;

(ii) States should ensure that individuals and communities, especially those at risk of disproportionate impacts, have information about hazardous substances in their environment, bodies, food and consumer products, including the adverse effects that may result from exposure. Better use of biomonitoring information, in conjunction with disease registers, should be made, particularly for those at high risk of adverse impacts;

(iii) Businesses should undertake robust human rights due diligence for actual and potential impacts of hazardous substances and wastes linked to their activities, including identifying and assessing adverse impacts that may result therefrom;

(iv) Where States require businesses to help generate, collect, assess and update information about hazardous substances and wastes, they must ensure that adequate and appropriate mechanisms are in place to ensure the integrity

of the information generated and assessments performed, through government oversight, the involvement of third parties, or some combination thereof to ensure the reliability of information. Direct or indirect financial ties and other conflicts of interest must be disclosed;

(v) States should ensure that reliable baseline information is generated for the presence of hazardous substances in air, water and soil that may be released by extractive or other industrial activities before such activities begin;

(vi) Where information is unavailable, States should make the public aware of missing information and exercise caution to prevent possible adverse impacts while information is generated, collected and assessed;

(b) To ensure information is accessible:

(i) States must actively inform the public of the risks of hazardous substances and wastes, including those at risk of disproportionate impacts. States should ensure that people have access in adequate languages and formats to information on specific adverse impacts of hazardous substances released into their environment and in everyday products;

(ii) States must immediately communicate to the public imminent threats to public health and the environment. States should ensure that all information that would enable the public to prevent harm is disseminated. Businesses whose activities result in imminent threats must convey to the government authorities and the public a threat to public health or the environment, providing full access to information about risks, impacts and mitigation measures;

(iii) States should create a centralized system that is physically and economically accessible regrouping all relevant information on hazardous substances and wastes and its impact on human health and the environment, including concerns raised with national and subnational authorities and businesses;

(iv) States and businesses should be guided by the principle of full disclosure, allowing secrecy only when the necessity and legitimacy of confidentiality are proved. States must require that claims of confidentiality be justified and periodically resubstantiated. Grounds for the refusal of access to information must be interpreted in a restrictive way, taking into account the public interest served by disclosure. If information exempted from disclosure can be separated out without prejudice to the confidentiality of the information exempted, public authorities must disseminate the remainder of the information requested

(v) States should ensure any limitations to the right of access to information on hazardous substance and wastes should be in conformity with the law, the principle of proportionality and necessity, reasonable purpose and objective and protection of the right of others;

(vi) Information relevant to the protection of and respect for human rights should never be considered "confidential" or "secret". Health and safety information about hazardous substances and wastes should not be confidential, including emissions into the environment, toxicity studies and chemical identity;

(vii) States and businesses should provide an exhaustive list of information or types of information that is not publicly accessible but provided to governments, including the reason for non-disclosure;

(viii) States should improve the traceability of the human rights impacts of hazardous substances and wastes in the global supply chain. Businesses should ensure that information on human rights impacts of hazardous substances and wastes flows up and down the supply/value chain, including between operations in foreign countries;

(ix) States must ensure that court proceedings and settlement agreements on alleged impacts of hazardous substances and wastes do not have confidentiality attached;

(x) States must ensure access to an effective remedy and have a grievance mechanism for individuals to appeal against denials of access to information;

(c) To ensure information is functional:

(i) States must ensure that information is presented in a form that allows the recipient to protect, respect, fulfil and enjoy human rights;

(ii) States must ensure that all necessary information is available and accessible to ensure access to an effective remedy and meaningful public participation;

(iii) Businesses should communicate information to Governments, and be subject to regulation and strict guidelines about information. Businesses should also communicate to the public relevant information about hazardous substances in their supply chains and products in a user-friendly format;

(iv) States and businesses should publish information in the languages of linguistic minorities and indigenous peoples, and pay special attention in providing information to those most at risk;

(d) To ensure non-discrimination in the generation, collection or production of information:

(i) States must ensure disaggregated information is available on actual and potential impacts to those at heightened risk of adverse impacts due to their proximity or geographic location, physical conditions, economic status, occupation, gender or age;

(ii) States must ensure that information is available and accessible on the risks of childhood exposure to hazardous substances and wastes, paying close attention to pre and postnatal periods;

(e) To increase international and cross-border cooperation:

(i) States should create a global database of information on hazardous substances and wastes, including a repository of intrinsic properties, uses, protective measures and regulations/restrictions and other information necessary to protect human rights from hazardous substances;

(ii) States should implement the Guiding Principles on Business and Human Rights with special attention to hazardous substances and wastes, particularly to the responsibility of the chemical manufacturers to realize the right to information;

(iii) States should accelerate the implementation of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, develop Pollutant Release and Transfer Registers, and implement the Globally Harmonized System of Classification and Labelling of Chemicals;

(iv) States should ensure that foreign governments have access to all available health and safety information about hazardous substances and wastes that may be produced, released, used or transported abroad.